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ABSTRACT

On March 28, 2003 the U.S. Department of Education (ED) issued a report titled "Race-Neutral Alternatives in Postsecondary Education: Innovative Approaches to Diversity." The purpose of this report is to describe a number of race-neutral approaches that postsecondary institutions across the United States are using. This staff assessment by the U.S. Commission on Civil Rights examines "Race-Neutral Alternatives" in light of the Commission's prior analyses, findings, and conclusions. ED states that the "Race-Neutral Alternatives" document consisted of program descriptions, rather than best practices examples, and the report provides no criteria on which the programs are judged. The most the document can do is list programs that might work; it does not in fact provide alternatives. The greatest weakness of the report is that it ignores the growing body of research that challenges assertions that some of the programs are viable substitutes for affirmative action. (Contains 50 endnotes.) (SLD)

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U.S. Commission on Civil Rights

May 2003

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U.S. Commission on Civil Rights

The U.S. Department of Education's *Race-Neutral Alternatives in Postsecondary Education: Innovative Approaches to Diversity*—Are They Viable Substitutes for Affirmative Action?

May 2003

Equal opportunity in higher education is a right protected by federal laws. Throughout most of the 20th century, however, long-established discriminatory admissions policies at the nation's universities seriously hampered minority access to higher education. Since a college degree opens doors to professional employment opportunities and graduate education, many of the nation's schools began establishing policies so that people of color could benefit from higher education to the same extent as their white counterparts. For example, in the 1970s, affirmative action found its place in college admissions policies, and substantively redressed the entrenched discrimination against racial and ethnic minorities and women. Still, by the 1980s, it was evident that minorities and women were more commonly admitted to less prestigious institutions. As America's population becomes more diverse, policies intended to provide minorities equal access to higher education, as the law requires, must be sustained.

On March 28, 2003, the U.S. Department of Education (DOEd) issued a report titled *Race-Neutral Alternatives in Postsecondary Education: Innovative Approaches to Diversity.*[1] According to DOEd, the purpose of the report is to "describe a number of race-neutral approaches that postsecondary institutions across the country are using." Accordingly, as part of the Commission's responsibility to monitor and report on civil rights issues, including the appraisal of federal laws and policies, this staff assessment examines *Race-Neutral Alternatives* in light of the Commission's prior analyses, findings, and conclusions.[2]

In *Race-Neutral Alternatives,* DOEd states that its intention is not to "assess these [non-affirmative action] programs," and cautions that the document should not be read as a "best practices guide." *Race-Neutral Alternatives* "merely describes these programs, relying on the literature published about these programs [and] provides nothing more than a catalog of options that are available."[3] DOEd's own description testifies to the report's weaknesses and limitations. The DOEd report provides no criteria on which the programs it lists are judged "notable" race-neutral efforts. Furthermore, because DOEd does not conduct independent assessments of the programs, but rather accepts uncritically declarations of program success, it cannot recommend useful approaches.[4] The most it can do is list programs that might work and not provide the alternatives that the title promises. Unsupported by research, the list cannot offer real solutions. Perhaps the report's most significant flaw is that it ignores the growing body of research that challenges assertions that some of the programs are viable substitutes for affirmative action. Taken together, these weaknesses seriously compromise the document's credibility and value to education policymakers. This is highly unfortunate since *Race-Neutral Alternatives* is specifically directed to institutions to assist in diversifying their student populations.

Race-Neutral Alternatives separates its catalog into two parts, admissions approaches and developmental approaches. This review will assess *Race-Neutral Alternatives* in the same manner, beginning with class-rank or percentage plans.

Class-Rank or Percentage Plan Approach to Admissions

Class-rank or percentage plans guarantee students who rank within a certain percentage of their schools' senior class, and in some cases, who also completed a requisite academic program, admission to state universities.[5] DOEd states that "class-rank plans send a message to students that if they work hard and

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rise to the level of competition within their schools, they will be admitted to a prestigious university."[6] It also claims that race-neutral alternatives such as class-rank plans avoid "costly and counterproductive litigation." If colleges and universities pursue such policies, they can "maintain diversity," reduce the contentious atmosphere on campuses, and devote more effort to resolving the root causes of inequality.[7]

Race-Neutral Alternatives, however, ignores fact-finding and analyses, including the Commission's, that approaches such as percentage plans have serious shortcomings. The Commission has conducted two major studies on the effectiveness of class-rank or percentage plans in improving the presence of minorities in higher education. These are *Toward an Understanding of Percentage Plans in Higher Education: Are They Effective Substitutes for Affirmative Action?* (April 2000), a Commission Statement; and *Beyond Percentage Plans: The Challenge of Equal Opportunity in Higher Education* (November 2002), a Commission Staff Report.[8]

In *Toward an Understanding of Percentage Plans*, the Commission examined the use of high school class ranks as a means of increasing minorities in public higher education in the states of California, Florida, and Texas. After a thorough review, the Commission concluded in 2000 that percentage plans had significant flaws and limitations and failed to create diversity in undergraduate education.[9] Because racial segregation dominates much of the American landscape, percentage plans necessarily afford undergraduate admission to some African American and Latino undergraduates in state colleges and universities, especially in states where school segregation by race is most pronounced.[10] However, a reliance on an admissions plan that is implicitly premised upon continued school and neighborhood segregation is unacceptable. *Toward an Understanding of Percentage Plans* further noted that percentage plans are not used by professional or graduate schools. The Commission thus recommended such plans be used only in combination with affirmative action.[11]

Beyond Percentage Plans updated and expanded upon the Commission's 2000 report. It also examined developmental approaches, such as federal financial aid and TRIO—a set of programs intended to ready students for college, support them while they are enrolled, and prepare interested students for doctoral studies, namely Talent Search, Upward Bound, Upward Bound Math and Science, Student Support Services, and the Ronald E. McNair Postbaccalaureate Achievement Program. *Beyond Percentage Plans* offered findings based on a thorough analysis of original data obtained from university, state, and federal offices, official sites on the Internet, and interviews with appropriate officials. Unlike *Race-Neutral Alternatives*, *Beyond Percentage Plans* did not just list possible ideas; rather, it proposed solutions and made recommendations informed by assessment of relevant data.

Beyond Percentage Plans' analysis of admissions in California, Florida, and Texas revealed that no significant improvement had been made in the rates of minority enrollment at the undergraduate or graduate/professional levels, and that in many cases, rates had declined. These findings revealed outcomes that are counter to the spirit and letter of civil rights laws and policies, such as providing equal educational opportunities and integrated learning environments. Specifically:

- California's ban on the use of race in admissions decisions resulted in a decrease in the proportion of black, Hispanic, and Native American students enrolled in the University of California System (UC), at both the undergraduate and graduate/professional levels.[12] The UC Board of Regents approved a 4 percent plan on March 19, 1999, that took effect for students entering UC as freshmen in the fall 2001. Referred to as "eligibility in the local context," it guaranteed admission in the UC system to the top 4 percent of students in California high schools, if the students had successfully completed specific college preparatory coursework.[13] While the implementation of the 4 percent plan in 2001 led to a small increase in minority enrollment, pre-ban rates have not been restored. Furthermore, in the year after affirmative action admissions practices were abolished, the University of California's two premier campuses (UCLA and Berkeley) reported fewer black and Hispanic students, despite that both campuses received more applications from minority students with strong academic credentials than they had in previous years.[14]

- Immediately following the *Hopwood v. State of Texas* decision in 1996 that abolished affirmative action in admissions, black and Hispanic enrollment at the University of Texas-Austin decreased.[15] The state of Texas instituted an admissions plan (HB 588) in 1998 that guarantees high school graduates in the top 10 percent of their class admission to Texas' public institutions of higher learning.[16] While the state percentage plan resulted in an increase in minority enrollment in its initial years, this progress was short-lived. In the fourth year of the plan, the numbers of both black and Hispanic students decreased, with the reduction most pronounced among black students.[17] This general trend is evident at the state's premier law and medical schools, where the state percentage plan does not apply. In almost every case, underrepresented minority enrollment levels in 2000–2001 were less than underrepresented minority enrollment levels in 1996–1997, although black enrollments were the only ones to decline each year.[18]

- Executive Order 99-281, signed by Florida Governor Jeb Bush in November 1999, banned the use of race in university admissions. The Talented 20 Program replaced affirmative action in university admissions and was implemented in fall 2000 (academic year 2000–2001). The program guarantees admission to one of Florida's 11 public institutions for any Florida resident who graduated in the top 20 percent of his or her public high school class and completed a prescribed 19-unit academic high school curriculum.[19] When Florida implemented its 20 percent plan, an increase in minority enrollment in the state university system was expected. However, the heavy reliance on class ranks for college admission had a negative effect on black students since they are consistently underrepresented among students identified as Talented-20 eligible.[20] Black students tend to be found in poor-performing schools that do not provide the classes needed for Talented-20 consideration.[21] In addition, black and Hispanic freshmen remain underrepresented at the University of Florida, the state's flagship institution, compared with their proportions among high school graduates. Finally, while total minority graduate enrollment increased in the state university system, black and Hispanic graduate students are underrepresented at the state's premier research institution, the University of Florida, relative to their presence in the state university system. Again, the number of new minority law school students, to which the Talented 20 Program does not apply, also decreased. It is clear that efforts to close the gap between the proportions of racial/ethnic minorities among Florida high school graduates and first-time enrolled students must extend beyond the Talented 20 Program.[22]

More generally, *Beyond Percentage Plans* reveals numerous drawbacks to overreliance on percentage plans:

- The plans themselves are formulaic and deny admissions officers the ability to select students of color whose potential for success in college may be manifested in ways other than class ranks.

- Arguably, students in the top percentages of their high school classes, particularly in high-performing schools, would have been admitted to colleges and universities based on high grades and standardized test scores, without percentage plans.

- Uneven distribution of high-achieving students and high-quality schools unfairly affects percentage plan admissions, unless factors other than class rank are also considered. High-performing students in competitive schools who do not qualify under percentage plans compete for a limited number of remaining seats. Similarly, high-achieving students who fail to fall within the percentage limits at one high school might easily have qualified at an inferior school across town or one that had fewer high-achieving students. Many such students would have been eligible for admission under former affirmative action programs or traditional admissions standards.

- Percentage plans run the risk of admitting students who reach eligibility requirements, but do so in failing schools, and thus are not academically prepared for college. Therefore, states must provide academic support before and during enrollment.
- Percentage plan programs deny admissions to students from low-performing schools who do not have college preparatory credentials or academic prerequisites. To be assessed fairly, these students require profile assessments or comprehensive reviews to determine potential. Despite offering alternative pathways for admission, the three states have not been successful at reaching such students. For instance, in Florida, while 10 percent of students can be admitted through profile assessment, in practice only 3 percent of students gain admission this way.[23]

Race-Neutral Alternatives lists Florida's Talented 20 Program as worthy of emulation by institutions seeking diversity. *Beyond Percentage Plans* found that black students are consistently less likely to be included in the Talented 20 student pool. Vast inequality in resources exists among Florida's secondary schools, and black students are more likely than whites to be found in poor schools that do not have the resources, including appropriate courses, to prepare them for consideration for the Talented 20 Program. Thus, the Talented 20 Program fails in two important respects: (1) the program does not improve the presence of black students in the student bodies, and (2) many black students are not even given a chance to compete for admission.[24]

The findings in *Beyond Percentage Plans* resonated with those of the Commission's earlier report, specifically: percentage plans as they are currently administered do not alone improve diversity and must be implemented in conjunction with affirmative action; other supplemental recruitment, admissions, and academic support programs; and an emphasis on improving public elementary and secondary education.[25] This overall conclusion is supported by several subsequent studies and reports conducted by scholars and prominent institutions. These include Harvard University's two studies, *Percent Plans in College Admissions: A Comparative Analysis of Three States' Experiences* and *Appearance and Reality in the Sunshine State: The Talented 20 Program in Florida* (February 2003); the Marta Tienda et al. report, *Closing the Gap?: Admissions & Enrollments at the Texas Public Flagships Before and After Affirmative Action* (January 2003); and the Tomás Rivera Policy Institute study, *The Reality of Race Neutral Admissions for Minority Students at the University of California: Turning the Tide or Turning Them Away* (March 2003).[26]

Harvard's *Comparative Analysis* takes into consideration the increasingly diverse state and college-age populations, as well as racial differences in high school completion rates in reviewing percentage plans. It also assesses the outreach, recruitment, and financial aid efforts that the premier institutions in each of the three states have put into place to dull the impact of the ban on race-conscious admissions policies. The study finds:

- High school graduation rates in the three states differ by race, with white students graduating at a higher rate than black and Hispanic students. This reduces the number of black and Hispanic students for the percentage-plan-eligible pool, and the percentage plan's intended purpose is imperiled even before the admissions process begins. (*Beyond Percentage Plans* had a parallel finding in regard to Florida's percentage plan, that black high school graduates are underrepresented among Talented 20 students. Thus, blacks are disadvantaged even prior to the admissions process.)
- Without supports such as outreach, recruitment, and financial aid, percentage plans are just "empty shells."[27] (*Beyond Percentage Plans* reached a similar conclusion: percentage plans must be supplemented with proactive recruitment, outreach, and academic support.)

Likewise, *Appearance and Reality in the Sunshine State* analyzes Florida's percentage plan against a backdrop of increasing population diversity. The study discusses:

- The racial breakdown of high school graduates who receive the diploma that would allow them to be included in the pool of Talented 20-eligible students.
- The lower likelihood of including underrepresented minorities in the pool since more white and Asian students hold this diploma.[28]

Tienda et al.'s *Closing the Gap* is part of an extensive multiyear study that follows a representative sample of Texas high school sophomores and seniors through high school and college. The report:

- Assesses the effect of the ban on affirmative action in the admissions policies of Texas' two most selective institutions, the University of Texas at Austin and Texas A&M University.
- With minor exceptions, finds that blacks and Hispanics are seriously underrepresented in the applicant, admittee, and enrollee pools of the two flagships when compared with the demographic profile of Texas' high school graduates. Furthermore, the underrepresentation is more pronounced after *Hopwood*.[29]

Tomás Rivera Policy Institute's *Turning Them Away* focuses on Latino and African American freshmen in the University of California (UC) System between 1997 and 2002. The study:

- Employs an approach similar to that used in *Beyond Percentage Plans'* analysis of California and reaches generally comparable conclusions. *Turning Them Away* estimates that if the acceptance rate in 2002 for Latinos were the same as in 1997 (64 percent), 21,361 Latinos would have been admitted to UC schools rather than 15,831; similarly, if the acceptance rate in 2002 for African Americans were the same as in 1997 (57 percent), 5,050 African Americans would have been admitted rather than 3,221.
- Draws attention to an increasingly diverse state population, and the dissonance in Latino and African American representation among the enrolled University of California freshman population on the one hand, and the state college-aged and high school graduate populations on the other.
- Finds the number of African American and Latino students admitted has increased, but stresses that the number of applications from these groups also increased. Further, despite admission increases, African American and Latino students as a percentage of all freshmen are decreasing.[30]

Comparative Analysis concluded: "affirmative action is a modest and effective tool that universities need, and it is simply wrong to suggest that we have found any kind of simple non-racial alternative."[31] *Appearance and Reality in the Sunshine State* found no basis for the claim that Florida's Talented 20 percentage plan "not only preserved, but actually increased diversity in higher education."[32] *Closing the Gap* stated: "the top ten percent admissions policy is not an alternative to affirmative action . . . In the absence of financial support to needy students coupled with a vigorous outreach program to high schools populated by minorities and economically disadvantaged students, the top ten percent plan will not diversify campuses of selective institutions."[33] *Turning Them Away* documented that race-neutral policies failed to turn the tide for black and Latino students.[34] All of the above studies, and *Beyond Percentage Plans*, used somewhat different approaches to analyze similar applications, acceptance, enrollment, and census data and still reached a similar overall conclusion. Backed by such substantial evidence, the overall conclusion that percentage plans alone are not viable alternatives to race-conscious policies cannot be ignored.

Race-Neutral Alternatives itself found race-conscious admissions policies to be more effective in increasing minority participation in higher education. While praising the "encouraging admission statistics" that Texas, California, and Florida achieved, *Race-Neutral Alternatives* states that the three state university systems are "at a disadvantage because they are not playing on a level playing field. [These three states] are strictly limited to race-neutral admission policies [while] their competitors

around the country are able to employ race-based policies. This no doubt depresses the minority participation rates at these three state-university systems."[35]

Developmental Approaches

Developmental approaches are those that help students to strengthen their records in an effort to gain admission to and graduate from college. Pre-college developmental programs identify promising students for college and provide them with a foundation for college-level work through academic and financial aid counseling and tutoring. In-college developmental approaches provide tutoring and support services to ensure that admitted students remain in college through graduation. In-college programs also encourage undergraduates to consider doctoral studies.[36]

Race-Neutral Alternatives is contradictory in its acknowledgement that race is important, yet insignificant in efforts to achieve diversity.[37] The stated goals of developmental approaches in *Race-Neutral Alternatives* are sound per se—namely, to improve the skills of elementary and secondary school students to enable them to be competitive in the admissions process, and to provide support to admitted students to ensure their graduation. Nevertheless, race-neutral developmental approaches alone cannot bring about the desired racial diversity in higher education, particularly in the nation's selective institutions. *Beyond Percentage Plans*, like many other reports published after its release, fully recognized the importance of quality K–12 education in leveling the playing field. Opportunities in elementary and secondary education have substantive influence on access to higher education later on.[38]

The inescapable reality, however, is that reducing the vast inequality in the nation's school systems takes political will, time, and sufficient funding. With a severe long-term fiscal crisis occurring in almost every state, and intense competition among programs for limited funds in each state, there is no guarantee that there will be sufficient funds for improving failing schools. As long as educational opportunities remain unequal, it is race-conscious approaches that will make sure that the pipeline to higher education for minorities remains open and that all students have access to higher education. America cannot afford to lose another generation of students while it attempts to fix the existing education system that fails so many of our potentially high-achieving students.[39]

Programs

A careful examination of the race-neutral developmental approaches presented in *Race-Neutral Alternatives*—such as Expansion of Advance Placement Courses, Partnerships Among Colleges and Low-Performing Schools, Partnerships Among the College Board and Educational Institutions—reveals that they target "underserved populations," "students in low-performing schools," "students from low-income families," "students from . . . high schools historically underrepresented at the university," and "low-income students not at the top of their classes."[40] The Commission has embraced a broad definition of diversity, but developmental efforts that avoid any use of race as a factor severely limit their effectiveness. Race-based discrimination and mistreatment remain in American society and continue to restrict the life chances of minorities,[41] a reality that race-neutral approaches ignore. Thus, the Commission has held steadfast that race needs to continue to be a factor in developmental approaches and that targeting potential participants based solely on economic factors is inadequate.

Of course, economics is still an important factor, and it is appropriate for the federal government to provide aid to low-income and minority students. The catalog of programs listed in *Race-Neutral Alternatives* includes several that the federal government sponsors, such as GEAR UP, TRIO, and the State Scholars Initiative. GEAR UP targets "low-income students who are prepared to enter and succeed in postsecondary education" and TRIO concentrates on motivating and supporting students from "disadvantaged backgrounds." The State Scholars Initiative seeks to develop the skills of young people so that they are prepared to succeed in college without "special preferences."[42] The federal government, with its vast resources and authority backed by federal laws, can play a pivotal role in leveling the playing field for access to higher education. As *Beyond Percentage Plans* pointed out, without the federal programs, many minority and low-income students would not have the opportunity to attend college.[43] The policy implication is that federal programs such as the ones mentioned above

need to include race as one of the eligibility factors for participation in order to ensure that disadvantaged minorities are adequately represented.

Beyond Percentage Plans analyzed the TRIO programs using data from a variety of sources. After a thorough review of TRIO's components, the report concluded that educators and educational institutions view the TRIO programs as effective in affording educational opportunity beyond high school for many youths. However, *Beyond Percentage Plans* also found that there is a paucity of aggregated data to assess the extent of TRIO's effect on college enrollment and graduation of its participants, particularly minorities. In addition, while many of the TRIO grantees advertise the programs on the Internet, they tend to network with the same communities and schools to recruit students. Thus, new communities where large immigrant populations reside may not be served by the TRIO programs. Moreover, it is probable that many of the minority economically disadvantaged children and their families lack access to the Internet.[44]

In the area of funding, *Beyond Percentage Plans* found that TRIO programs have strong congressional support. However, at the existing funding level, TRIO is serving only a small percentage of eligible students. The Council for Opportunity in Education reported that about 9.6 million low-income students from middle school to college are currently eligible to participate in the TRIO programs. Despite increases in appropriations over the years, current funding allows less than 7 percent of the eligible population to be served. To expand services, the Council for Opportunity in Education recommended a $200 million increase (over the proposed $800 million in FY 2002) for the program in FY 2003, for a total funding of $1 billion.[45] Unfortunately, the FY 2003 and FY 2004 funding estimates for TRIO are just $803 million,[46] well below what is needed.

Funding

Race-Neutral Alternatives' section on "Expanding Financial Aid" discusses expanding access to financial aid as "a strategy for diversifying the pool of students who have the skills to complete a college education but lack the resources." [47] As examples, *Race-Neutral Alternatives* names the University of Texas at Austin's Longhorn Scholars program and Texas A&M's Century Scholars. It notes that Florida has "similarly increased needs-based financial aid." [48] This section also notes that President Bush's proposed budget for Pell grants for 2004 is a record $12.7 billion and that 4.9 million students would be helped, which is "nearly one million more than two years ago."[49]

Beyond Percentage Plans included a comprehensive review of the federal financial aid programs and barriers faced by students and their families. Federal funding for Pell grants has kept up with inflation, but not with the rising cost of tuition, resulting in a decline in purchasing power. And fiscal crises in the states forced cutbacks in their appropriations to higher education. Declining interest rates during budget crises also cut returns on college endowments. Making matters worse, private giving declined. To compensate for revenue loss, colleges and universities have raised tuition to new highs, increased mandatory fees, imposed new fees, charged first-time students higher tuition than returning students, tightened residency requirements, and raised admission and financial aid requirements to curtail enrollment. Almost all these actions further erode the purchasing power of financial aid, and all have adverse civil rights implications since they further diminish access for all qualified students, in particular the economically disadvantaged and minority students. *Race-Neutral Alternatives* nevertheless catalogs expanding access to financial aid as a diversity strategy without qualification. It is inescapable, however, that institutions' ability to expand financial aid has been very much constrained.[50]

Further, in 1992, the reauthorization of the Higher Education Act made a number of changes in the need-analysis formulas used in awarding Title VI financial aid. The changes in the need-analysis rules affected the majority of student aid applicants, with more students losing than gaining eligibility. Thus, for these students, their families' expected contributions would increase out of proportion with their ability to pay. In the face of unmet financial needs, students and their families are being forced to borrow to subsidize tuition. Loans are increasingly replacing grants as the primary source of financial aid. Over the next 10 years, 4.4 million qualified students will not be able to afford a four-year college education, and 2 million will not be able to afford any college.[51]

Increasingly, states and institutions are channeling their financial dollars to "merit-based" scholarships (i.e., those based primarily on grades and standardized test scores) to attract students who are high academic achievers, despite the increased and urgent demand for need-based financial aid. An overarching concern about this trend is that these scholarships may benefit students who can already afford college. The civil rights community is similarly concerned that changes in how financial aid and merit-based scholarships are distributed have had a detrimental effect on minority and other disadvantaged students. To illustrate, the Florida Bright Futures Scholarship Program, started in 1997, pays full and partial college tuition for students based on a combination of high school grades, and ACT or SAT scores. In 1998, whites made up 61 percent of the student population but 77 percent of them received financial awards. Conversely, blacks made up 28 percent of the student population but only 8 percent of them received financial awards. The disproportionate amount of merit-based aid distributed to white students has raised civil rights concerns, and civil rights activists are contemplating filing a complaint with the Department of Education. One major problem with Florida's program is that many minorities and low-income students attend substandard K–12 public schools that do not offer the courses required by the state university system.[52] Ineligibility to attend a university consequently means lost opportunity to benefit from the scholarship program.

Conclusion

Race-Neutral Alternatives has a number of weaknesses. First, it fails to provide the criteria for declaring programs notable. Thus, reviewers must determine for themselves the worthiness of the programs. Second, DOEd did not independently evaluate the programs and relied on available literature, sometimes of a promotional nature, to describe the programs. As a result, it listed problematic programs that do not necessarily advance diversity or civil rights. In particular, DOEd devotes significant space to the percentage plan policies in place in California, Texas, and Florida, touting these as having achieved diversity without using race or ethnicity in admissions decisions. *Beyond Percentage Plans* and *Toward an Understanding of Percentage Plans*, as well as findings of several other major studies, persuasively documented that percentage plans are of limited value in achieving this vital goal. Further, *Race-Neutral Alternatives* catalogs TRIO without any discussion of existing programmatic weakness and funding insufficiency. Similarly, in describing Pell grants, it fails to address or even alert readers to the declining purchasing power of financial aid.

DOEd correctly notes that TRIO and other similar programs are key components of a strategy to ensure children of color have equal educational opportunity. However, DOEd needs to focus more effort on sustaining TRIO and other similar federal programs with resources to enable the latter to regularly collect and analyze data on the college enrollment and graduation rates of its participants. Further, TRIO must require grantees to expand their network of communities and use a variety of formats and languages in outreach efforts to improve inclusion. In addition, DOEd must annually realistically assess the funding needs of TRIO and other similar federal programs and seek sufficient funding to serve all eligible students.

Especially against a backdrop of state budget crises and the actions some colleges and universities are taking to make up for cutbacks in state appropriations, DOEd needs to determine and provide realistic funding for federal financial assistance programs. As *Beyond Percentage Plans* noted, much to the disadvantage of college students, loans are fast becoming the main component of a financial aid package.[53] The policy implication of this conclusion for DOEd is clear: as an essential part of its strategy, it must ensure that sufficient funds are provided for grant programs so that loans are not the mainstay of student financial aid.

Evaluated in the context of the Commission's studies on percentages plans and federal developmental approaches, and as buttressed by the findings of other recent studies, it is obvious that *Race-Neutral Alternatives* (1) is limited, by its own admission; (2) has failed to acknowledge and incorporate a large body of studies already completed on many of the areas it addresses; and (3) fails to acknowledge the importance of adequate funding for programs such as TRIO that DOEd touts as critical components of its strategy. Thus, DOEd's efforts to identify race-neutral alternatives to affirmative action have fallen far short of a passing mark. If America truly wants to be a country that leaves no child behind, race must continue to be one of the factors in selecting students for participation in developmental programs and in

admission to college.

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[1] The U.S. Department of Education, *Race-Neutral Alternatives in Postsecondary Education: Innovative Approaches to Diversity*, March 2003 (hereafter cited as DOEd, *Race-Neutral Alternatives*) is available at <http://www.ed.gov/ocr/raceneutralreport.html>.

[2] Through the many facets of its work, the U.S. Commission on Civil Rights endeavors to educate the President, the Congress, and the public on civil rights issues worthy of attention. Throughout its history, the Commission has been concerned about college admissions policies and has sought to further those that promote equal access to higher education, which has led the Commission to issue a variety of reports and statements on the topic. Commission products that testify to its consistent concern and interest in the use of affirmative action programs in higher education as a tool to promote diversity and remedy discrimination include *Beyond Percentage Plans: The Challenge of Equal Opportunity in Higher Education*, Staff Report, November 2002 ; *The Supreme Court Revisits Affirmative Action: Will Grutter and Gratz Mean the End of Bakke*? Staff Analysis, April 2003; *The Commission, Affirmative Action, and Current Challenges Facing Equal Opportunity in Education*, March 2003; *Toward an Understanding of Percentage Plans in Higher Education: Are They Effective Substitutes for Affirmative Action?* April 2000; *Toward an Understanding of Bakke*, 1979; *Toward Equal Educational Opportunity: Affirmative Admissions Programs at Law and Medical Schools*, 1978; *Statement by the United States Commission on Civil Rights on Affirmative Action*, News Release, 1978; *Statement by the United States Commission on Civil Rights on Affirmative Action*, 1977; and Chairperson Arthur S. Flemming (for the Commissioners), letter to Attorney General Griffin B. Bell, May 13, 1977.

[3] DOEd, *Race-Neutral Alternatives*, pp. 6–7.

[4] *See* ibid. , pp. 13–14.

[5] U.S. Commission on Civil Rights, *Beyond Percentage Plans: The Challenge of Equal Opportunity in Higher Education* , Staff Report, November 2002, p. 116 (hereafter cited as USCCR, *Beyond Percentage Plans*).

[6] DOEd, *Race-Neutral Alternatives*, p. 33.

[7] Ibid.

[8] U.S. Commission on Civil Rights, *Toward an Understanding of Percentage Plans in Higher Education: Are They Effective Substitutes for Affirmative Action?* April 2000 (hereafter cited as USCCR, *Toward an Understanding of Percentage Plans*).

[9] USCCR, *Toward an Understanding of Percentage Plans*, p. 1.

[10] Ibid. , p. 8.

[11] Ibid., p. 1.

[12] Ibid., p. 116.

[13] Ibid., p. 14.

[14] Ibid., p. 116.

[15] Ibid.

[16] Ibid., p. 33.

[17] Ibid., p. 116.

[18] USCCR, *Beyond Percentage Plans*, p. 51.

[19] Ibid., pp. 53–54.

[20] While blacks make up more than 20 percent of the high school graduates, only slightly more than 10 percent are identified as Talented-20 eligible. *See Beyond Percentage Plans* , p. 58, fig. 2.17.

[21] USCCR, *Beyond Percentage Plans*, p. 57.

[22] USCCR, *Toward an Understanding of Percentage Plans*, p. 116.

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[23] Ibid., p. 117.

[24] Ibid., p. 57.

[25] Ibid., p. 1. It is significant that the University of Florida saw the need to go beyond the Talented 20 Program to improve diversity. In spring 2002, about two academic years after the program was implemented, the institution announced that it would automatically admit the top 5 percent of each high school's graduating class. *See Beyond Percentage Plans,* p. 65.

[26] The Civil Rights Project at Harvard University, *Percent Plans in College Admissions: A Comparative Analysis of Three States' Experiences*, February 2003 (hereafter cited as Harvard University, Civil Rights Project, *Comparative Analysis*) and *Appearance and Reality in the Sunshine State: The Talented 20 Program in Florida,* February 2003 (hereafter cited as Harvard University, Civil Rights Project, *Appearance and Reality in the Sunshine State*); the Marta Tienda et al. report, *Closing the Gap?: Admissions & Enrollments at the Texas Public Flagships Before and After Affirmative Action,* January 2003 (hereafter cited as Tienda et al., *Closing the Gap*; and the Tomás Rivera Policy Institute study, *The Reality of Race Neutral Admissions for Minority Students at the University of California: Turning the Tide or Turning Them Away*, March 2003 (hereafter cited as Tomás Rivera Policy Institute, *Turning Them Away*).

[27] Harvard University, Civil Rights Project, *Comparative Analysis.*

[28] Harvard University, Civil Rights Project, *Appearance and Reality in the Sunshine State.*

[29] Tienda et al., *Closing the Gap.*

[30] Tomás Rivera Policy Institute, *Turning Them Away.*

[31] Harvard University, Civil Rights Project, *Comparative Analysis,* Foreword, p. ix.

[32] Harvard University, Civil Rights Project, *Appearance and Reality in the Sunshine State*, Foreword, p. v.

[33] *See* Tienda et al., *Closing the Gap*, Abstract.

[34] Tomás Rivera Policy Institute, *Turning Them Away*, pp. 3–4.

[35]DOEd, *Race-Neutral Alternatives*, pp. 39–40.

[36] USCCR, *Beyond Percentage Plans*, p. 90.

[37] For example, *Race-Neutral Alternatives* states: "The achievement gaps in our schools are real and persistent. While 40 percent of white fourth-graders are proficient or above in reading according to the National Assessment of Educational Progress reading assessment, only 16 percent of their Hispanic peers and 12 percent of their black peers read at that level . . . The statistics are similar in other areas of study." *See* DOEd, *Race-Neutral Alternatives,* p. 8.

[38] USCCR, *Beyond Percentage Plans,* pp. 55–56, 118.

[39] USCCR, *Toward an Understanding of Percentage Plans*, p. 10.

[40] DOEd, *Race-Neutral Alternatives*, pp. 10, 12, 16, 18, 20.

[41] USCCR, *Toward an Understanding of Percentage Plans*, pp. 8–9; USCCR, *Beyond Percentage Plans,* pp. 2, 88.

[42] DOEd, *Race-Neutral Alternatives*, pp. 22–24.

43] USCCR, *Beyond Percentage Plans,* p. xiii.

[44] USCCR, *Toward an Understanding of Percentage Plans*, p. 99.

[45] Ibid., pp. 93–94.

[46] Office of the President, Office of Management and Budget, *Fiscal Year 2004 Appendix, Budget of the U.S. Government*, p. 335.

[47] DOEd, *Race-Neutral Alternatives*, p. 18.

[48] Ibid., p. 19.

[49] Ibid.

[50] USCCR, *Toward an Understanding of Percentage Plans,* pp. 102, 111–13.

[51] Ibid., pp. 105–06.

[52] Ibid., pp. 109, 111.

[53] Ibid., pp. 105–06.

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